

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

DAVID L. KIRBY, III,

Plaintiff,

5:24-cv-522 (BKS/TWD)

v.

MAMOUN ABRAHAM,

Defendant.

Appearances:

Plaintiff pro se:

David L. Kirby, III

05002304

Onondaga County Justice Center

555 South State Street

Syracuse, NY 13202

Hon. Brenda K. Sannes, Chief United States District Judge:

MEMORANDUM-DECISION AND ORDER

Plaintiff David L. Kirby, III brought this action under 42 U.S.C. § 1983 against the Syracuse Police Department and sought leave to proceed *in forma pauperis* (“IFP”). (Dkt. Nos. 1, 3). This matter was referred to United States Magistrate Judge Therese Wiley Dancks who, on June 14, 2024, granted Plaintiff’s application to proceed IFP and issued a Report-Recommendation, recommending that Plaintiff’s complaint be dismissed with prejudice and without leave to amend as to the Syracuse Police Department, pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915(A), but with leave to file an amended complaint. (Dkt. No. 6). Plaintiff did not file objections to the Report-Recommendation, but instead filed an amended complaint. (Dkt. No. 7). On June 26, 2024, this Court issued a text order terminating the recommendations in the Report-Recommendation as moot and recommitting the matter to

Magistrate Judge Dancks for an initial review of the amended complaint. (Dkt. No. 9). On October 25, 2024, Magistrate Judge Dancks issued a Report-Recommendation recommending that Plaintiff's amended complaint be dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915(A) for failure to state a claim upon which relief may be granted, and that Plaintiff be granted leave to file a second amended complaint. (Dkt. No. 15). Magistrate Judge Dancks informed Plaintiff that he had fourteen days within which to file written objections to the Report under 28 U.S.C. § 636(b)(1), and that the failure to object to the Report within fourteen days would preclude appellate review. (*Id.* at 16). No objections to the Report-Recommendation have been filed.

As no objections to the Report-Recommendation have been filed, and the time for filing objections has expired, the Court reviews the Report-Recommendation for clear error. *See Petersen v. Astrue*, 2 F. Supp. 3d 223, 228–29 (N.D.N.Y. 2012); Fed. R. Civ. P. 72(b) advisory committee's note to 1983 amendment. Having reviewed the Report-Recommendation for clear error and found none, the Court adopts the Report-Recommendation in its entirety.

For these reasons, it is hereby

ORDERED that the Report-Recommendation (Dkt. No. 15) is **ADOPTED**; and it is further

ORDERED that the amended complaint (Dkt. No. 7) is **DISMISSED WITHOUT PREJUDICE AND WITH LEAVE TO AMEND**; and it is further

ORDERED that any second amended complaint must be filed **within thirty (30) days** of the date of this Order. Any second amended complaint must be a complete pleading which will replace the current complaint in total and must comply with the directions in the Report-Recommendation (Dkt. No. 15, at 14–15, n. 7); and it is further


ORDERED that if Plaintiff files a timely second amended complaint, it shall be referred to Magistrate Judge Dancks for review; and it is further

ORDERED that if Plaintiff fails to file a timely second amended complaint, the Clerk shall close this case without further order; and it is further

ORDERED that the Clerk serve a copy of this Order on Plaintiff in accordance with the Local Rules.

IT IS SO ORDERED.

Dated: November 27, 2024
Syracuse, New York


Brenda K. Sannes
Chief U.S. District Judge